

**naplesnews.com**

## **Collier's 'donations' from developers raise concerns**

By Denise Zoldan

Sunday, March 19, 2006

A dozen developers seeking land rezonings from the Collier County Commission have agreed to contribute nearly \$3 million in land or money for affordable housing, yet county leaders haven't adopted an ordinance making the so-called "donations" a legal requirement.

Still today, county government has no oversight ordinance in place to ensure how the money donated by developers, some of which is given to nonprofit organizations, is spent.

The practice prompted a complaint last year to the State Attorney's Office, which investigated and determined the county wasn't breaking any laws in its dealings with a Fort Lauderdale developer.

In the year that has passed since the State Attorney found no crime was committed, a dozen developers have agreed to contribute nearly \$3 million without an ordinance in place. Most have committed to give \$1,000 per residential unit and 50 cents per commercial square foot.

Tom Pelham, a Tallahassee land-use attorney and former secretary of the Department of Community Affairs, said asking for voluntary donations before an ordinance is passed that applies to developers countywide in a uniform way opens the county to a legal challenge from developers.

"I think doing it on an ad hoc basis is of questionable legal validity," Pelham said. "I think there'd be serious legal problems doing it in that manner.

"It's not voluntary if you're told if you don't pay it we'll deny your project," Pelham said.

Locally, developers are reluctant to complain about the expected donations to the affordable housing fund, saying the commissioners hold the power to turn down a developer's zoning request if they don't donate.

"I don't think they would openly complain," said Bruce Anderson, a Naples land-use attorney who represented Triad Housing Partners of Fort Lauderdale, the company involved in the investigation.

In that case, according to the State Attorney's Office, Triad representatives met with Commissioner Jim

Coletta, who asked for money for affordable housing.

Triad agreed to give \$200,000 to the nonprofit Collier County Housing Development Corp. for its down payment assistance program.

When Assistant State Attorney Norman O'Rourke closed the Triad investigation in April 2005, he wrote in the closing memo: "...it is clear that a request for money was made in return for a favorable view of a zoning change..."

However, the quid pro quo didn't rise to the level of a crime because there was no "corrupt intent," O'Rourke said.

So far it's mostly been pledges of donations from developers for rezoning projects instead of money actually changing hands from developers to county government. One nonprofit already has received at least \$250,000.

O'Rourke told the Daily News that it isn't his job to determine whether commissioners are complying with state statutes by continuing the practice of taking the money pledges. His office looks into criminal activity.

Longtime Naples builder Dino Longo of Longo Construction Inc. calls the donations "extractions" and believes developers have no choice.

"And they can't tell you how or when they are going to use (the money)," he said.

Hundreds of thousands of dollars in donations are going to the nonprofit Empowerment Alliance of Southwest Florida Community Development Corp. in Immokalee.

The nonprofit organization's executive director, Barbara Cacchione, is thrilled with the results of the donations.

They helped buy the land and build a 26-home affordable housing community in Immokalee called Milagro Place. The first two homes closed last week and low-income residents already have moved in.

Cacchione, who was chief of the county's comprehensive planning department until 1999, said developers now understand about the need for affordable housing and are choosing to donate.

"I think they have been enlightened that every development has an impact on affordable housing," she said.

During her time with county government, she proposed ordinances requiring provisions for affordable

housing, but they never got approved, she said.

“There was nothing in place when it should have been in place. I wrote many proposals to put them into place since 1989,” she said.

She said developers have a choice not to donate if they can prove they aren't having an effect on affordable housing.

When asked by the Daily News about the developer donations, Collier Clerk of Courts Dwight Brock said the ordinances approving the developers' rezoning requests state that they “shall donate,” leaving no room for choice.

Brock also has a concern about developer dollars that are donated to outside organizations such as the Empowerment Alliance.

“By statute, as custodian of the taxpayers' money, all of the money that belongs to the taxpayers of Collier County should be in bank accounts that the Clerk of Circuit Courts controls. The only way the Board of Collier County Commissioners can expend that money is by the clerk making the determination of the lawfulness of the expenditure.

“(The donations to the Empowerment Alliance) circumvents the entire process of control that belongs to the taxpayers through their government,” Brock said.

Longo's proposed 57-unit Sandalwood community in North Naples recently was turned down even though the landowners agreed to donate \$57,000, or \$1,000 per home, toward affordable housing and staff said the development met all required standards.

However, on another rezoning petition that came before the commission earlier this month, a developer offered 10 times the going rate to contribute to the trust fund.

Coletta urged his colleagues to consider approval to gain the money for affordable housing, noting that \$120,000 for affordable housing is significant.

“If they're making a donation of this magnitude ... I don't know of anyone who has offered \$10,000 per unit,” Coletta said.

He added later: “That's a lot of money ... That balances the books both ways.”

Commissioner Tom Henning asked if the county could legally ask for the \$120,000 if there's no ordinance that extracts fines for excessive excavating. The developer had excavated in violation of county law.

“This is a voluntary contribution for affordable housing purposes,” Assistant County Attorney Marjorie Student-Stirling said.

“The \$120,000 in my mind is chump change. I can’t imagine why we would vote to reward such flagrant violation of the law,” Commissioner Fred Coyle said.

“So the only thing we’re doing here is a slap on the hand if this person comes forward with \$120,000,” Commissioner Frank Halas replied.

Coletta responded: “That’s basically it.”

Told what Pelham said about the donations, County Attorney David Weigel didn’t want to respond.

“I have no idea on what basis he is making his comment. I don’t have any comment on Mr. Pelham,” he said.

But Weigel did say this: “I spoke with the board a meeting or two ago. My thought is that it’s more than crafting an ordinance resolution and bringing it to the board. A linkage fee or affordable housing mitigation fee needs to show a rational nexus similar to an impact fee.”

Weigel indicated that the county will be hiring a Tallahassee firm, which is using the same consultants that Monroe County has hired to draft a mitigation/linkage fee ordinance for affordable housing. Those fees are similar to impact fees, onetime charges on new construction to help pay for growth.

Weigel guessed it would be a couple of months before a proposed ordinance with data backing it will go before the County Commission.

Meanwhile, Weigel said, the county’s growth plan calls for an element of affordable housing and that practice of taking donations can continue as long as they are voluntary and the county’s decisions on developers’ land-use zoning requests aren’t tied to the donations.

Land-use attorney Anderson said the fees need to be put in an ordinance.

“And they need to be uniformly applied to everyone,” he said.

“It’s an insignificant amount,” said Commissioner Coletta, who admits becoming impatient with trying to get an affordable housing ordinance passed.

“I understand the concern,” he said. “It seems like trying to get something to move forward ... quite often it seems to be all talk and no action.”

- - -

Staff writer Gina Edwards contributed to this report.

© 2006 Naples Daily News and NDN Productions. Published in Naples, Florida, USA by the E.W. Scripps Co.